

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Blanca Telephone Company)	CC Docket No. 96-45
)	
Seeking Relief From the June 2, 2016)	
Letter Issued by the Deputy Managing)	
Director Which Seeks to Enforce an)	
Interpretation of the Commission's Rules)	
Regarding the Use of USF High Cost)	
Funding for the Purpose of Operating a)	
Rural Mobile Cellular Telephone System)	
During the 2005-2010 Time Period)	

To: The Secretary
ATTN: The Commission

**FOURTH MOTION FOR LEAVE TO SUPPLEMENT
EMERGENCY APPLICATION FOR REVIEW**

**Blanca Telephone Company
Timothy E. Welch, Esq.
Hill and Welch
1116 Heartfields Drive
Silver Spring, MD 20904
(202) 321-1448
(301) 622-2864 (FAX)
welchlaw@earthlink.net
July 5, 2017**

Introduction

Blanca Telephone Company (Blanca), by its attorney, pursuant to 47 C.F.R. § 1.41, § 1.106(b)(2)(i) (changed circumstances or recent event requires supplement), § 1.106(f) (authorizing requests to supplement pleadings), and § 1.115(g)(1) (recent events or changed circumstances since last filing), hereby seeks leave to supplement its June 16, 2016 Emergency Application for Review, or its June 24, 2016 Petition for Reconsideration in the event the Commission denies Blanca's exhaustion waiver request found at Application for Review, page 4. As discussed in the Petition for Reconsideration, at 1 n. 1, it appears that the Commission denied Blanca's exhaustion waiver request which necessitated the need to file the Petition for Reconsideration.¹ In support whereof, the following is respectfully submitted:

Kokesh v. SEC: **Statutes of Limitations Apply to Government Money Recovery Proceedings**

On June 5, 2017 the Supreme Court issued its unanimous decision in *Kokesh v. SEC*, 198 L. Ed. 2d 86, 2017 U.S. LEXIS 3557 holding that a government money recovery action which operates as a penalty must comply with the applicable statute of limitations. Blanca's initial and subsequent submissions in this proceeding, and in the appeals court prohibition proceeding in D.C. Cir. No. 16-1216, argues that the FCC's June 2, 2016 Letter constitutes a penalty/forfeiture order for purported violations of vaguely referenced rule part violations. *See e.g.*, June 16, 2016 Emergency Application for Review, at ii-iii, 1, 3-4, 10, 15-17, 19, 24-25. *Kokesh* clearly indicates that disgorgement imposed by the Commission's June 2, 2016 order seeking recovery of monies disbursed to Blanca

¹ The Petition for Reconsideration is a reformatted version of the Application for Review to meet the filing requirements applicable to reconsideration petitions filed under § 1.106 and it was filed in response to the Commission's suggestion in a letter that Blanca's waiver request had been denied. Otherwise, the two pleadings are substantially similar. However, other than suggesting that Blanca's waiver request had been denied, the Commission has not provided any further guidance regarding Blanca's administrative exhaustion waiver request.

in the 2005-2010 time period is untimely under one year statute of limitations found at § 47 U.S.C. § 503(b)(6)(B) of the Communications Act and the Federal five year statute of limitations found at 28 U.S.C. § 2462. *3M Co. v. Browner*, 17 F.3d 1453, 1457 (D.C. Cir. 1994) (§ 2462 serves as a jurisdictional bar to Federal agency rule violation proceedings).

Determining Whether a Money Recovery Order Imposes A Penalty Subject to Limitations

Kokesh examines two factors to determine whether a money recovery action constitutes a penalty subject to, and limited by, statutes of limitations. First, does the government's money recovery order redress "a wrong to the public, or a wrong to the individual" and seek "to impos[e] punishment for an offense committed against the State." Second, does the government's recovery order intended "to deter others from offending in like manner" rather than "compensat[e] a victim for his loss." *Kokesh*, 198 L. Ed. 2d at 92.

The FCC's Debt Collection Is Premised Upon Federal Rule Part Violation Findings

If it is assumed that the Commission is correct and the June 2 Letter is properly construed as a debt recovery action, that action is premised upon the finding of rule part violations and those rule part violation findings are indispensable to any Commission debt recovery action because "absent a finding of rule violation, the FCC could not claim an offset," June 16, 2016 Emergency Application for Review, at 19, and "the June 2 Letter would effectively state that 'Blanca owes the government money for no reason in particular,' a wholly unreasoned proposition." December 19, 2016 Motion for Leave to Supplement Emergency Application for Review, at 8. Moreover, the Commission has plainly stated that the purpose of the Commission's USF debt recovery actions under the DCIA of 1996 is "to protect the Universal Service Fund (USF or Fund) from waste, fraud and abuse." *Sandwich Isles Communications, Inc., Order*, 31 FCC Rcd. 12999, 12999 (2016).

The Commission's clearly stated goal in invoking its newly created debt recovery procedure is to enforce its USF rules to prevent perceived wrongs to the public such as waste, fraud, and abuse.

The Commission is not in any way protecting any “aggrieved individual.” *Kokesh*, 198 L. Ed. 2d at 93. Accordingly, the first prong of the *Kokesh* test is satisfied and the FCC’s debt recovery action is penal in nature and subject to the pertinent statute of limitations.

The Commission’s Objective is Deterrence, Not Compensation

The second prong of the *Kokesh* test examines whether the purpose of the Commission’s June 2 Letter money recovery action is rule violation deterrence or victim compensation. The Commission’s stated purpose of its newly created USF debt recovery action is deterrence of USF “waste, fraud, and abuse” a public purpose, *Sandwich Isles Communications, Inc., Order*, 31 FCC Rcd. 12999, 12999 (2016), and victim compensation is not even an issue in this matter.

Moreover, the June 2 Letter, Attachment B, directs Blanca to make payment into the U.S. treasury because the Commission is using the DCIA of 1996 to collect “a debt owed to the United States.” June 2 Letter, at 1. However, because the U.S. treasury does not fund any part of the USF, the U.S. treasury cannot be considered a “victim” in Commission initiated USF debt collection matters. *See US. ex rel Shupe v. Cisco Sys.*, 759 F.3d 379, 377-88 (5th Cir. 2014) (holding that the FCC’s USF program does not contain any Federal money). Since the U.S. treasury does not fund the USF, the June 2 Letter’s direction that Blanca to pay money into the U.S. treasury appears to be plain error. In any event, the June 2 Letter is plainly not compensatory, the purpose of the disgorgement ordered in the June 2 Letter is to enforce Commission rule parts and to deter “waste, fraud, and abuse.” Accordingly, the forfeiture ordered in the June 2 Letter is penal and subject to the statutes of limitations. The June 2 Letter is untimely with regard to the above referenced one and five year statutes of limitations.

The Commission’s Quandary: Federal Tax Money or USF Victim?

The situation presents a bit of a box for the Commission. If the Commission were to order Blanca to reimburse the USF through USAC, rather than make payment to the U.S. Treasury as

ordered in the June 2 Letter, Attachment B, in an effort to make the USF fund a “victim” for the purpose of avoiding the statutes of limitations problem, that would effectively concede that there is no debt owed to the United States. In that scenario the Commission’s DCIA of 1996 debt collection effort would be voided because the Commission would be determining that compensation is owed to a third party rather than determining the existence of a Federal debt. The DCIA of 1996 exists to collect debts owed to the United States, the statute is not a victim compensation statute and Commission use of the DCIA of 1996 for third party compensation would be improper.

On the other hand, if the Commission adheres to its position in the June 2 Letter that USF money is Federal money payable to the U.S. treasury, then the Commission is seeking recovery of public money rather than seeking to compensate a victim, and the Commission is clearly involved in a penal rule enforcement effort which is subject to the statute of limitations. Furthermore, the punitive nature of the Commission’s actions against Blanca would be highlighted were the Commission to amend the June 2 Letter and enter an order asserting that Blanca’s purported rule violations were “continuing” in nature until the “debt” were paid.

The June 2 Letter is Not Merely Remedial

The Commission argued to the Court of Appeals that the Commission’s efforts to recover money from Blanca “is not a forfeiture proceeding of any kind, summary or otherwise” and that the Commission’s effort is remedial.² FCC Opposition to Petition for Writ of Prohibition, D.C. Cir. No. 16-1216, at 15. However, *Kokesh*, 198 L. Ed. 2d at 95, instructs that merely because there might be some component of remediation in a disgorgement order, that circumstance is not controlling.

² The June 2 Letter literally reads as a “forfeiture order” because it compels Blanca to immediately forfeit money in its possession to the Government. Moreover, the June 2 Letter at 7-8 threatens additional penalties upon failure to pay immediately including accrued interest, “a [delinquency] penalty of six percent per annum,” administrative collection charges, and an unspecified “additional surcharge” associated “with certain judicial actions to recover judgment.”

What is controlling is whether the disgorgement order “constitutes punishment even in part.” As discussed above, the Commission’s plainly stated purpose in USF recovery actions is deterrence and penal in nature.

Moreover, the Commission has referred the matter to the DoJ for enforcement under the False Claims Act. The DoJ has indicated that it will be seeking an additional \$14 million judgment, for a total of about \$21 million when combined with the \$7 million forfeiture ordered in the June 2 Letter, in circumstances where the Commission claims that the remedial amount owed is approximately \$7 million. June 16, 2016 Emergency Application for Review, at 10-11. The Commission’s effort to apply a 3X multiplier to the purported USF amount owed is certainly penal. Furthermore, the Commission’s actions in this matter have led to the termination of Blanca’s cellular service for lack of funding and not only has Blanca lost the value of the USF money it received, Blanca has suffered the additional penalty of losing its own money it invested in the cellular system. See March 30, 2017 Second Motion for Leave to Supplement Emergency Application for Review and Notice of Discontinuation of KNKQ427/KNKR288 Cellular Service. The Commission’s manner of proceeding is plainly doing more than merely restoring the status quo and the Commission’s efforts are penal and limited by the pertinent statutes of limitation.. *Kokesh*, 198 L. Ed. 2d at 95.

Recent Subpoena Issued to NECA

Blanca has been informed that the Commission’s OIG issued an April 20, 2017 *Subpoena Duces Tecum* to NECA regarding information about USF payments made to Blanca during the period from January 1, 2005 through December 31, 2012. It is Blanca’s understanding that the document production deadline is currently suspended. Blanca has requested that NECA provide it with copies of any documents which are produced under the subpoena and Blanca has also requested that NECA provide it with copies of any other subpoenas which the Commission might have served

upon NECA. NECA reports that it is seeking “guidance” on how to respond to Blanca’s requests; to date Blanca has not received an answer.


Blanca takes the opportunity presented by the Commission’s effort to revisit stale history to renew its objection to the Commission’s continuation of its nearly decade long search for something upon which to fault Blanca. After many years of investigation, and after having issued the June 2 Letter which cemented the Commission’s approach in this enforcement matter, the Commission’s search for facts from a time long ago should have ended long ago. In this proceeding the Commission has subjected an American family to years and years of investigation by multiple entities in a case in which the General Counsel concedes that Blanca has clean hands even after years and years of Commission probing. FCC Opposition to Petition for Writ of Prohibition, D.C. Cir. No. 16-1216, at 14. “Even wrongdoers are entitled to assume that their sins may be forgotten,” *Kokesh*, 198 L. Ed. 2d at 91, but while wrongdoers are entitled to repose, the Commission inexplicably subjects Blanca and its family ownership to an endless investigation on the weak reeds that the Commission need not comply with statutes of limitations and that the Commission need not afford notice and an opportunity to be heard prior to entering rule part violation findings concerning Blanca’s unremarkable use of USF monies to provide “mobile” telecommunications services in a rural, high cost area. *See Public Notice*, FCC 15-133, released October 19, 2015 (the Commission plainly states that USF monies are properly used to support mobile telecommunications services).

After nine-plus years that has passed in this investigation, and after all the effort and resources which have been expended by the Commission, the Managing Director, the General Counsel, the OIG, the DoJ, NECA, USAC, KPMG LLP, the D.C. Circuit Court, and Blanca Telephone Company, all there is to show for these substantial time, money, and emotional expenditures by these numerous entities is the June 2 Letter’s severely flawed attempt to create a novel shortcut summary rule violation and debt collection procedure for enforcement of the

Commission's rules in USF cases.³ It is well passed time for the Commission to terminate this matter.

Hill & Welch
1025 Connecticut Ave. NW #1000
Washington, D.C. 20036
(202) 321-1448 (cell)
(301) 622-2864 (FAX)
welchlaw@earthlink.net
July 5, 2017

Respectfully submitted,
BLANCA TELEPHONE COMPANY



Timothy E. Welch

Its Attorney

³ The SEC provided the target in *Kokesh* with a hearing before obtaining an order directing disgorgement. Blanca was not afforded a hearing of any type, but after years of investigation Blanca was presented with the June 2 Letter and summarily ordered to pay nearly \$7 million without regard to hearing rights or statutes of limitations. The Commission is reminded that it is not dealing with a faceless, publicly owned corporate entity whose employees go home each evening secure in the knowledge that "it is a company problem." Subjecting an American family to a never ending Federal investigation for no valid reason is not how a Federal agency should operate.



Federal Communications Commission
Washington, D.C. 20554

June 2, 2016

By UPS Overnight
And E-Mail to alanwehe@fone.net
alanwehe@GoJade.Org

Mr. Alan Wehe
General Manager
Blanca Telephone Company
129 Santa Fe Ave.
Alamosa, CO 81101

Re: The Blanca Telephone Company
Demand for Repayment of USF High-Cost Funds

DO NOT DISCARD THIS IMPORTANT NOTICE
OF A DEMAND FOR PAYMENT
OF A DEBT OWED TO THE UNITED STATES AND ORDER OF PAYMENT

Dear Mr. Wehe:

This letter is to notify you that the Federal Communications Commission (the "FCC") has determined that the Blanca Telephone Company ("Blanca" or the "Company") has received improper payments from the Universal Service Fund's ("USF") high-cost program in the amount of \$6,748,280, which was paid between 2005 and 2010. Our determination follows an investigation by the FCC's Office of Inspector General (OIG), the Universal Service Administrative Company (USAC), and the National Exchange Carrier Association (NECA). The determination of an overpayment also constitutes a debt owed to the United States that must be recovered and is immediately due and payable without further demand. Additionally, this is a Demand for Payment which provides you with certain important information including: (a) the fact that payment is due immediately, in full, and without further demand, (b) the background of the debt, (c) important rights, and (d) instructions for payment.

Background

On March 17, 2008, KPMG LLP initiated an audit of Blanca in connection with Blanca's receipt of USF high-cost program support. Thereafter, the OIG issued five administrative subpoenas for, among other things, reports, filings, and correspondence that Blanca filed with NECA and USAC regarding USF high-cost support.

On August 24, 2012, NECA initiated a "Loop" and "Non-Reg Review" focused on the underlying records for Blanca's 2011 Cost Study in the area of non-regulated operations. NECA undertook the Loop review to provide assurance the loop counts used for the 2012-1 USF filing (December 2011 loops) were properly counted and categorized in accordance with FCC rules. NECA provided Blanca with questionnaires to which Blanca responded. NECA also conducted an on-site investigation of Blanca's headquarters in Alamosa, CO. Based on Blanca's submission and NECA's on-site inspection, NECA issued a report on January 29, 2013, which concluded Blanca impermissibly received USF high-cost support because its claims for support included costs and facilities for a *mobile* wireless system.

NECA required Blanca to substantially and materially revise its high-cost support filings beginning with the 2011 Cost Study. In response, Blanca retained Moss Adams to review and revise Blanca's submissions.¹ These revisions were required because Blanca did not track or allocate expenses associated with providing local service to customers over its landline and cellular systems or the expenses associated with providing service to customers of other carriers roaming on Blanca's cellular system. Blanca operated these cellular stations and its Local Exchange Carrier (LEC) telephone company under a single management structure without allocating costs and expenses between regulated and non-regulated services. In particular, Blanca characterized its cellular stations as Basic Exchange Telephone Relay Service (BETRS) facilities in its CPRs, and by including all costs attributable to its mobile cellular system in its cost studies, failed to comply with Parts 64, 36 and 69 of the FCC's rules. The inclusion in cost studies of such cellular investment, expenses, and costs that were not used and useful to provide regulated telephone service is prohibited, and resulted in inflated disbursements to Blanca from ICLS, LSS, High Cost Loop Support, and Safety Net Additive Support.

In Blanca's responses to the OIG subpoenas and during NECA's investigation, Blanca claimed it was providing fixed wireless service, *i.e.*, BETRS, for which it was entitled to receive high-cost support as a LEC. This was not the case. In particular, NECA determined that Blanca was not providing BETRS,

¹ In addition to the Report's other findings, and in the section of NECA's report titled "Review Findings Report," NECA directed Blanca to remove from the 2011 cost study all costs and revenues associated with the wireless service, including but not limited to, towers, Blanca's ZTE wireless switch and radio equipment, including associated depreciation and expense, as well as ICLS, LLS and the 2012-1 cost loop filings. Additionally, Blanca was directed to remove all access lines and pool revenue associated with the wireless service from settlements for all months remaining in the pooling window (minutes, lines, SLCs, ARCs (starting July 2012), FUSC and switched access revenue). Blanca was also directed to remove 146 loops associated with the wireless service from the 2011 cost study, the 2012-1 high cost loop filing, and the January 2012 pool reporting. Additionally, 149 loops were to be removed from 2010 for cost study averaging. Blanca Telephone Company, 28th Access Year Review, Review Findings Report, January 28, 2013.

and instead was providing only mobile cellular service throughout its entire Eligible Telecommunications Carrier (ETC) study area. As such, Blanca improperly included costs and facilities attributable to non-regulated mobile cellular service, as well as wireless loop counts, in its cost studies that served as the basis for filing for USF high-cost funds. Although not addressed in NECA's report, Blanca's claims for USF support were also based in part on its costs to provide cellular services outside of its designated LEC study area, as demonstrated by a comparison of Blanca's LEC and cellular operating areas, a review of Blanca's billing records, and as confirmed by testimony provided during interviews of Blanca personnel as discussed below. Blanca therefore received USF high-cost support to which it was not entitled as a LEC because it submitted claims for support based upon the provision of *mobile* cellular service both within and outside of its LEC study area.

By correspondence to you on January 28, 2013, NECA directed Blanca to remove all costs attributable to its wireless service and provide documentation of the adjustments to NECA no later than February 22, 2012. Specifically, NECA directed Blanca to refile its cost study for 2011, removing all costs attributable to the wireless system, as well as revised Interstate Common Line Support (ICLS), Local Switching Support (LSS), and the 2012-1 High Cost loop filings. Blanca completed these revisions in a series of filings with NECA and USAC, and the funds for USF high-cost support for the post-2011 period have been recovered through charge backs and recoupments. Any improperly received USF high-cost support for periods prior to 2011 have not been recouped.

Findings

Since as early as 2003, Blanca has claimed reimbursement from the high-cost program for the costs of providing telephone service as a rate of return, landline carrier. Blanca is authorized to provide landline telephone service as a LEC in portions of Alamosa and Costilla Counties, CO.² As a rural LEC, and based on the services Blanca provided during the relevant period, the Company could be reimbursed from the high-cost program for only the costs of providing regulated local exchange service within its authorized ETC study area. However, our investigation found that from at least 2005, Blanca claimed all of the costs it incurred to provide telephone service as a LEC were for landline and fixed wireless service, *i.e.*, BETRS, within its authorized study area even though Blanca was providing only *mobile* cellular service. In other words, the conduct that led Blanca to repay USF high-cost support payments after 2011 began as early as 2005. As such, Blanca received improper payments from the USF high-cost support program beginning in at least 2005.

A BETRS system, whatever the frequency utilized, must be dedicated to the end user and fixed at a customer's premises in order to qualify for high-cost support as a regulated local exchange service.³

² Blanca was designated as an ETC by the Colorado Public Utilities Commission on December 17, 1997, which entitled it to receive federal universal service support in accordance with 47 U.S.C. § 254 and implementing regulations by the FCC.

³ "BETRS is provided so that radio loops can take the place of (expensive) wire or cable to remote areas. It is intended to be an extension of intrastate basic exchange service." *Basic Exchange Telecommunications Radio Service, Report and Order*, 3 FCC Rcd. 214, 217 (1988). In the 1988 *Order*, the Commission made clear that it intended "that wire and radio basic exchange service [would] be treated similarly with regard to eligibility for high cost assistance." *Id.* at note 10. We also note that BETRS is treated the same as landline basic exchange facilities and service, rather than cellular or another mobile service, for purposes of the FCC's Uniform System of Accounts.

The definition of BETRS specifically excludes the provision of cellular mobile telephone service as was provided by Blanca.⁴ In so concluding, we find unavailing your argument that for the purposes of receiving high cost support as an incumbent landline carrier, “the definition of ‘fixed’ includes wireless service that is provided to a defined, limited geographic area where it can be received by a device that is *not nailed or screwed down*.”⁵

In particular, your argument misreads NECA’s Paper 4.9, Use of Wireless Technology to Provide Regulated Local Exchange Service (“NECA Paper”) as applied to Blanca’s cellular system. There is nothing in the FCC’s regulations or precedents, or in the Communications Act of 1934, as amended, (the “Act”) to support Blanca’s position. Whether Blanca’s service is “mobile” or “fixed” is not determined based on whether Blanca’s LEC customers’ signals are automatically handed off to *other* carriers in adjoining cellular service areas, and the NECA Paper makes no such distinction. Nor does the NECA Paper suggest that “‘fixed wireless’ service may provide for geographic mobility to wireless subscribers within a broadcast area, as long as this mobility is not as extensive as the ‘full’ mobility provided by mobile wireless services.”⁶ While the NECA Paper notes that one of the characteristics of new wireless technology is that the subscriber “may have some degree of ‘portability’ within the broadcast area,”⁷ the Paper in no way equates that “portability” to a cellular company’s entire cellular service area.

Instead, the NECA Paper makes it clear, among other requirements, that a wireless system must be fixed, not mobile,⁸ in order to qualify for high cost support as a rate of return company and that the LEC’s radio equipment at the customer site must be a *fixed* radio station.⁹ While explaining that wireless technology can be an effective means to provide a supported service to telephone customers where it is cost prohibitive or impractical over wireline facilities, NECA explicitly cautions its member companies that the costs for a system to provide mobile services are outside the scope of Title II and cannot be reported to the NECA pool or recognized in USF loop cost reporting,¹⁰ which is exactly what Blanca did, contrary to NECA’s admonitions.

⁴ The Commission recognized the use of cellular frequencies on a *fixed* basis to provide BETRS was appropriate and “in the public interest since it is intended to be an extension of basic exchange service in areas where there is inadequate or no basic exchange telephone service offered.” *In the Matter of Amendment of Parts 2 and 22 of the Commission’s Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service* in GEN. Docket No. 87–390, 3 FCC Rcd. 7033 (1988); *Reconsideration Granted in Part by In the Matter of Amendment of Parts 2 and 22 of the Commission’s Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, 5 FCC Rcd. 1138 (1990) (BETRS is a radio service that can be used to provide local exchange service in rural areas. It has no specified technology, but involves the use of mobile frequencies in radio loops between a basic exchange telephone subscriber and a telephone company central office.). *Id.* at note 2.

⁵ Letter from Richard L. Tegtmeier, counsel for Blanca Telephone Company, dated October 30, 2015 in response to J. Chris Larson, Assistant United States Attorney, letter of August 10, 2015 regarding 408 Rule of Evidence Settlement Communication (“Settlement Letter”).

⁶ Settlement Letter at 2.

⁷ NECA Paper at 9.

⁸ *Id.* at n.11.

⁹ *Id.* at 10.

¹⁰ *Id.* at 10.

As noted below, Blanca customers purchase service that allows them to use their cell phones throughout Blanca's cellular service area with handoff between multiple Blanca cell sites. They also can continue to use their phones by redialing and roaming on other cellular systems, and customers from other carriers have the ability to roam on Blanca's system when they make or receive calls in Blanca's cellular service area.¹¹ Thus, NECA's conclusion in its January 29, 2013 report (the "NECA Report"), that "[i]n order to include these costs in further filings Blanca would need to provide a wireless service that is fixed to the customer location in accordance with the cost issue,"¹² was consistent with the NECA Paper.

Our review of Blanca's operations further makes clear that Blanca was not providing BETRS or fixed telephone service to its customers over its cellular facilities. Blanca operates pursuant to two mobile cellular licenses, KNKQ427 serving CMA356- Colorado 9 – Costilla and KNKR288, serving CMA354 - Colorado 7 – Saguache, which provide mobile cellular service to Blanca's own customers as well as customers roaming on its cellular system serving Costilla, Alamosa, and Conejos Counties. Blanca provides mobile cellular service to customers via five cell sites which hand off to each other.¹³ The nature of the cellular service Blanca provides and the scope of the stations' operations are documented in the series of applications Blanca filed with the Commission, the FCC-issued authorizations to provide cellular mobile service and by other representations made to the Commission.¹⁴

¹¹ At one point Blanca conducted testing of its system because Verizon customers were having difficulty making and receiving calls within Blanca's service area. Deposition of A. Wehe in Cellular Network Inc. Corporation, individually and derivatively on behalf of Colorado 7-Saguache Limited Partnership vs. Sand Dunes Cellular of Colorado Limited Partnership, Colorado 7-Saguache Limited Partnership (Nominal Defendant) and Celco Partnership and Comnet Cellular (Additional Counterclaim Defendants), Case No. 03CV4096, District Court, Arapahoe County, Colorado, October 26, 2006, at 124. Wehe also provided oral testimony that Blanca obtained roaming revenue from other carriers for their customers roaming on Blanca's system. *Id.* at 211.

¹² Cover letter to the NECA Report, at 1. This conclusion is also consistent with the discussion of new wireless technologies in the NECA Paper. While these new technologies allow for some mobility within the range of their antennas, the operator can prevent mobile operations by fixing the receiver at the customer's location. ("Use of a permanently installed transceiver at the customer premises by the telephone company or by the customer can be effective at disabling or significantly limiting any portable or mobile capability of the radio system.") *Id.* at 9. And, when the NECA Paper referred to Commercial Mobile Radio Service (CMRS) leased capacity to provide regulated exchange telephone service by local exchange carriers such as Blanca, NECA conditioned the service being fixed without regard to any "broadcast area." *Id.* at 8.

¹³ According to Keith Hazlett, a Blanca engineer, Blanca's cellular system had five cell sites which handed off to each other, and there was no requirement to his knowledge that a cellular customer be located at a fixed location. Oral testimony of Keith Hazlett, Civil Investigative Demand, Tr., at 11. Blanca did not have any restriction in its application for wireless service or on its company website that a customer be located at a fixed location as a condition of receiving cellular service. Alan Wehe also testified that a customer could use his or her cellular phone to make a call throughout Blanca's cellular network as well as roam on other carriers' systems with which Blanca had a roaming agreement. Oral testimony of Alan Wehe, Civil Investigative Demand, Tr. At 68-69.

¹⁴ That Blanca's cellular system was designed and operated to provide cellular mobile service to its customers and those traveling through Blanca's cellular service area is evident from the application filed for a new cellular station at Antonito, CO. On November 20, 1995, Colorado RSA 7(B) (2) Limited Partnership (the "Partnership"), filed an application seeking to construct a new cellular system at Antonito. When the application was filed, Blanca owned 50% of the Partnership and later acquired the remainder partnership interests on September 11, 2000. The Partnership represented the station, later licensed under call sign KNKR288, would be operated in conjunction with Blanca's adjacent cellular station KNKQ427, Costilla, CO. The application proposed to cover more than 50 square miles of unserved areas in Conejos County in southeastern RSA No. 354B, and Costilla County in southwestern RSA No. 2356B, which was outside of Blanca's study area. The application represented that the cellular system would provide direct dial mobile and portable service to the public. "The cellular system will be interconnected so that local customers and roamers are able to place and receive calls to and from any telephone or terminal connected to the public

Blanca has participated in Commission proceedings as a mobile cellular carrier in WT Docket No. 05-265. In a Petition for Reconsideration, Blanca described itself as a “wireline company ... which expanded its operations to provide mobile wireless service.”¹⁵ As Blanca explained, it was having difficulty obtaining roaming agreements for voice and data services from national wireless carriers so it could provide seamless coverage for its customers who traveled outside of its service areas. Consistent with Blanca’s representations in its Reconsideration Petition, records obtained from Blanca demonstrate the Company has negotiated dozens of roaming agreements. These agreements provided Blanca with revenues from other carriers’ customers roaming on its cellular system and also enabled Blanca’s mobile cellular customers to travel to other areas of the country and use their mobile cellular phones.

Although during NECA’s investigation Blanca professed to provide service to 146 customers who could not receive landline service because “many of BTC’s customers lack[ed] access to commercial power,”¹⁶ Blanca’s operations as a cellular carrier were substantially more extensive than the representations made in the Settlement Letter that wireless service was provided to “remote” customers. Blanca provided its wireless service to any customer who requested it, whether or not the customer could receive wireline service or was located within an area where there was a source of electrical power, as Blanca represented to NECA. And, Blanca proactively upgraded its system and coordinated with other operators in the area to enable system handoff.¹⁷

Additionally, Blanca claimed USF high-cost support to provide service outside of its study area.¹⁸ Section 214(e)(5) of the Act defines a service area as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. In the case of a service area served by a rural telephone company, service area means a company’s “study area.” Only

switched telephone network, and to and from networks on other cellular or interconnected mobile systems. (Application, Exhibit VI, Colorado RSA 7B (2) Limited Partnership, Antonito, Colorado.) The Service Proposal noted that “[c]ustomers with complaints relating to their mobile or portable unit will be able to take it to the applicant’s service facility for repairs or call for a repairman to service it in the system’s service area where it is located.” Exhibit VI, Service Proposal, at 2. The application proposed to use Blanca’s cellular switch (Station KNQ427) and represented that the switching expenses would therefore be nominal. Exhibit IX, Construction Costs & First Year Operating Expenses. Blanca represented it “[had] the ability to construct and to operate the proposed system.” *Id.*

¹⁵ Petition for Reconsideration filed by Blanca Telephone Company in WT Docket No 05-265, at 1 (June 6, 2011).

¹⁶ NECA Report, Wireless Service Section at 1. Blanca also claimed that “[t]he Blanca Telephone Company has been using wireless technology since 1982 to provide basic service to approximately 150 customers in an unserved area (there are no land-line facilities available due to not being feasible and the installation would be cost prohibitive) and the area is sparsely populated.” Response of A. Wehe to OIG Subpoena dated October 23, 2012, Questions 26 & 27.

¹⁷ In this regard, Blanca also took measures to ensure that its cellular system would be compatible with other systems. Blanca installed Evolution Data Only (EVDO) equipment for its cellular system in 2007, which Blanca described as “BETRS EVDO” in its cumulative property record (CPR), to add at its five cell sites. Blanca coordinated installation of the EVDO equipment with the adjoining cellular system in which Wehe and Verizon Wireless hold ownership interests. “Verizon Wireless suggests that Blanca move to a 41 channel spacing configuration to enable inter-system hand-off. If you have any questions, let us know. Please reply with your concurrence to the plan above and dates for implementation.” (Email from M. Sandoval, Director-System Performance, Mountain Region, Verizon Wireless to T. Welch, Blanca’s FCC counsel; cc to A. Wehe, and L. Stevens, D. Sisneros, and M. Skelton of Verizon Wireless, dated July 5, 2007.)

¹⁸ Blanca provided cellular service to customers outside of Blanca’s LEC study area. For example, a review of billing records provided by Blanca reflects that customers received what it called its BETRS service in the city of Alamosa, outside of Blanca’s LEC study area, as well as in areas in which Blanca was not authorized to provide telephone service as a LEC. Response of A. Wehe to OIG Subpoena dated November 12, 2009, Question 24.

two of Blanca's cellular towers are located within Blanca's study area.¹⁹ As a LEC, Blanca did not have authority to claim high-cost support for any costs to provide service for any of its cellular customers served outside of its study area or for customers of other cellular carriers roaming on Blanca's cellular system. Any costs and expenses attributable to such cellular services were disallowed.

As discussed above, NECA determined, and we agree, that the costs and line counts Blanca was utilizing to claim high-cost support were attributable to Blanca's non-regulated cellular operations, rather than to a BETRS fixed service and were therefore not entitled to High-Cost support. NECA's investigation resulted in the recoupment of USF high-cost support only after 2011, which is only a small portion of the period during which Blanca improperly received these funds. Based on a review of Blanca's books and records obtained during the OIG investigation and Blanca's own revision of its cost study and other filings for the post 2011 period, we have determined Blanca owes the Fund an additional \$6,748,280 (the "Debt"). Further details of the Debt may be found on Attachment A hereto.

Accordingly, this letter has notified you of the Debt and it demands payment, in full, and without further demand, in accordance with the **Notice Information** provided below and Payment Instructions at Attachment B. Furthermore, you are notified that the Commission may reduce the Debt by:

- (1) Making a recoupment or offset²⁰ against other requests for claims for USF minutes of use,
- (2) Withholding payments otherwise due to Blanca, and
- (3) Other action permitted by law.

Important Notice Information

The following provides notification of procedures and information required by the Debt Collection Improvement Act of 1996.²¹ The Debt is owed to the United States. It is payable (the date of this letter is the Due Date) immediately, in full and without further demand. The Commission may apply any amount of undisbursed USF payments for minutes of use to offset or recoup the Debt.²² Any portion of the Debt unpaid at the end of the Due Date is Delinquent on that date ("Date of Delinquency") and administrative charges,²³ interest, and penalties will accrue thereafter.²⁴ The amount of interest that accrues²⁵ from the Date of Delinquency and the administrative charges are waived if the complete amount of the Debt is paid within 30 days of the Due Date.²⁶ Additionally, a penalty of six percent per annum accrues from the Date of Delinquency on any portion of the Debt that remains unpaid 90 days after the Due Date.²⁷ Furthermore, the Commission may refer a delinquent Debt to the United States Treasury or

¹⁹ Fort Garland KNKQ427 Location 1 and Blanca KNKQ427 Location 4 are situated within Blanca's authorized study area.

²⁰ An offset or recoupment means when any high-cost claim payment is due to you, the money will first be applied to any open debt followed by the pay out of any remaining balance. Such offset or recoupment does not stop interest, penalties, or other collection charges from accruing under 31 U.S.C. § 3717 and 31 C.F.R. § 901.9.

²¹ See 31 U.S.C. §§ 3716, *et seq.*; 47 C.F.R. §§ 1.1911 and 1.1901, *et seq.*

²² *United States v. Munsey Trust Co.*, 332 U.S. 234, 239, 108 S.Ct. 1599, 91 L.Ed. 2022 (1947) ("The government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due him.'").

²³ 47 C.F.R. § 1.1940(c).

²⁴ Public Law 104-134, 110 Stat. 1321, 1358 Apr. 26, 1996). See also 31 C.F.R. § 900.1, *et seq.*; 47 C.F.R. § 1.1901, *et seq.*

²⁵ 31 U.S.C. § 3717(a)-(c).

²⁶ 31 U.S.C. § 3717(d) and 47 C.F.R. § 1.1940(g).

²⁷ 31 U.S.C. § 3717(e)(2).

the Department of Justice for further collection action.²⁸ The United States Treasury will impose an additional administrative collection charge,²⁹ and it may commence administrative offset.³⁰ An additional surcharge may be imposed in connection with certain judicial actions to recover judgment.³¹

If you have evidence establishing that you do not owe the Debt, or if you have further verified evidence to substantiate your entitlement to receive payment for the disallowed USF payments, provide such evidence to the Commission within 14 days of the Due Date. Because our determination is based on the information you either provided or were unable to provide, there is no apparent reason for you to inspect and copy those same records. Finally, you may request the opportunity to repay the debt under the terms of a written agreement; however, such request must be made with 14 days of the date of this notice, and you must execute the Commission's form of the agreement within thirty days of the date of this notice.

This letter is sent by overnight delivery service and by e-mail.

The points of contact on this letter are Neil Dellar, who may be reached at (202) 418-8214 and Thomas Buckley, who can be reached at (202) 418-0725.

Sincerely,



Dana Shaffer
Deputy Managing Director

Copies:

Jonathan Sallet – General Counsel
Richard L. Tegtmeier, Esq.

Enclosures: Attachments A & B

²⁸ 31 U.S.C. §§ 3711(g); 3716; 28 U.S.C. § 3001, *et seq.*; 47 C.F.R. § 1.1912.

²⁹ 31 U.S.C. § 3717(e); 31 C.F.R. § 285.12 (j).

³⁰ 31 U.S.C. § 3716.

³¹ 28 U.S.C. § 3011.

Attachment A

BLANCA TELEPHONE COMPANY: HIGH COST ANALYSIS HIGH COST SUPPORT 2005 - 2010 SUPPORT PAID VS. CORRECTED SUPPORT										
FUND	ROW	SCENARIO	YEAR						TOTAL	
			2005	2006	2007	2008	2009	2010		
HCL	(1)	Support Actually Paid	\$802,620	\$787,644	\$751,512	\$837,624	\$860,916	\$993,096	\$5,033,412	USAC Disbursement Records
	(2)	Government Calculation	\$575,225	\$595,364	\$628,352	\$729,442	\$790,817	\$779,550	\$4,098,750	Gov't. Study Calculations
	(3)=(1)-(2)	Difference	\$227,395	\$192,280	\$123,160	\$108,182	\$70,099	\$213,546	\$934,662	
LSS	(4)	Support Actually Paid	\$946,136	\$868,296	\$954,312	\$983,088	\$932,868	\$696,891	\$5,381,591	USAC Disbursement Records
	(5)	Government Calculation	\$116,660	\$150,261	\$170,321	\$171,884	\$166,471	\$225,558	\$1,001,155	Gov't. Study Calculations
	(6)=(4)-(5)	Difference	\$829,476	\$718,035	\$783,991	\$811,204	\$766,397	\$471,333	\$4,380,436	
ICLS	(7)	Support Actually Paid	\$437,352	\$421,224	\$472,206	\$520,236	\$545,652	\$593,280	\$2,989,950	USAC Disbursement Records
	(8)	Government Calculation	\$235,616	\$217,450	\$275,442	\$297,493	\$308,808	\$323,503	\$1,658,312	Gov't. Study Calculations
	(9)=(7)-(8)	Difference	\$201,736	\$203,774	\$196,764	\$222,743	\$236,844	\$269,777	\$1,331,638	
SNA	(10)	Support Actually Paid	\$19,164	\$19,164	\$19,164	\$19,164	\$12,444	\$12,444	\$101,544	USAC Disbursement Records
	(11)	Government Calculation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	Totally Unregulated
	(12)=(10)-(11)	Difference	\$19,164	\$19,164	\$19,164	\$19,164	\$12,444	\$12,444	\$101,544	
TOTAL	(3)+(6)+(9)+(12)	Total Overpayment	\$1,277,771	\$1,133,253	\$1,123,079	\$1,161,293	\$1,085,784	\$967,100	\$6,748,280	

(USAC Confidential - Contains Investigatory Information)

ATTACHMENT B

Payment Instructions

The following information is being provided to assist you in making your payment.

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Payment should be wired, pursuant to the following instructions:

ABA Routing Number: 021030004

Receiving Bank: TREAS NYC

33 Liberty Street

New York, NY 10045

ACCOUNT NAME: FCC

ACCOUNT NUMBER: 27000001

OBI Field: USF – High Cost Program

APPLICANT FRN: _____ (Blanca Telephone Company)

DEBTOR NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: #979088

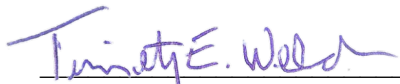
Please fax a completed remittance advice (Form 159) to U.S. Bank, St. Louis, Missouri at (314) 418-4232 at least one hour before initiating the wire transfer (but on the same business day).

For questions regarding the submission of payment, contact Gail Glasser, Office of the Managing Director, Financial Operations, at (202) 418-0578.

Certificate of Service

I hereby certify that I have this 5th day of July 2017 served a copy of the foregoing *Fourth Motion for Leave to Supplement Emergency Application for Review* by First Class United States Mail, postage prepaid, upon the following:

Mark Stephens
Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Timothy E. Welch